

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In the Matter of

Distribution of the
2014-17 Cable Funds

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) Docket No. 16-CRB-0009-CD (2014-17)
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**COMMENTS OF PROGRAM SUPPLIERS
ON THE EXISTENCE OF CONTROVERSIES**

The Motion Picture Association of America, Inc. (“MPAA”), on behalf of producers and distributors of syndicated series, including non-team sports, movies, and specials broadcast by television stations whose signals are carried as distant signals by cable systems (“Program Suppliers”), hereby submits its comments in response to the request for comments published by the Copyright Royalty Judges (“Judges”) on November 9, 2018. *See Distribution of Cable And Satellite Royalty Funds*, 83 Fed. Reg. 56106 (November 9, 2018) (“Notice”). The Notice requests comments regarding “the existence and extent of any controversies regarding distribution of the 2014 through 2017 cable and satellite royalty funds.” Notice at 56106. MPAA addresses controversies as to the 2014 through 2017 cable royalty funds (“2014-17 Cable Funds”) in these comments.

I. Controversies With Respect to the 2014-17 Cable Funds

A. Allocation Phase Controversies

Controversies exist in the Allocation Phase regarding distribution of the 2014-17 Cable Funds. Historically, the Judges have separated cable and satellite royalty proceedings into two phases, the Allocation Phase and the Distribution Phase. In Allocation Phase proceedings,

MPAA has represented the interests of all copyright owners of syndicated series, movies, specials and non-team sports broadcast by television stations during the royalty years at issue in those proceedings (“Program Suppliers”). MPAA intends to represent the interests of those same Program Suppliers in Allocation Phase proceedings regarding the distribution of the 2014-17 Cable Funds.

A controversy currently exists regarding the allocation of royalties among the claimant groups who have historically participated in Allocation Phase proceedings as to the 2014-17 Cable Funds.¹ The controversy encompasses whether the allocation of royalties in the Allocation Phase should be based on an allocation methodology that considers only claims which have satisfied Section 111’s eligibility criteria. During the 2010-13 Cable Allocation Phase proceeding, Program Suppliers sought discovery from the other Allocation Phase Parties in order to address these eligibility issues and their impact on the methodologies to be presented to the Judges in that proceeding. The Judges rejected Program Suppliers’ discovery request, not on its merits, but rather because they concluded that Program Suppliers had “effectively agreed,” in Joint Comments filed by all Allocation Phase Parties in the 2010-13 Cable Allocation Phase proceeding, to a historical process of allowing each category representative to make eligibility determinations in its respective category, and for Allocation Phase determinations to be based on the assessment of value among program categories without considering eligibility issues. *See Order Regarding Discovery*, Docket No. 14-CRB-0010-CD (2010-13) at 5-7 (July 21, 2016). Program Suppliers have not entered any such agreement as to the 2014-17 Cable Funds, and wish to have the Judges resolve this controversy at the outset of the Allocation Phase proceedings regarding the 2014-17 Cable Funds. *See id.* at 6, n.10.

¹ The Judges have not yet adopted Allocation Phase program category definitions for the 2014-17 Cable Funds.

If Allocation Phase hearings are held, MPAA intends to participate fully in those hearings as the Allocation Phase representative of the Program Suppliers category. MPAA will represent the interests of producers and distributors of syndicated series, movies, specials, and non-team sports, including the interests of copyright owners who have agreed to representation by MPAA. Finally, Program Suppliers have sought rehearing of the Judges' *Initial Determination Of Royalty Allocation* regarding the 2010-13 cable royalty funds, in which the Judges awarded unprecedentedly low royalty shares to Program Suppliers. It would be inefficient for the Judges and the parties to litigate Allocation Phase proceedings for the 2014-17 Cable Funds before rehearing and appellate proceedings for the 2010-13 cable royalty funds are fully resolved, as those proceedings may impact cable Allocation Phase proceedings for later royalty years. Accordingly, Program Suppliers recommend that the Judges hold any Allocation Phase proceedings regarding the 2014-17 Cable Funds in abeyance until the cable royalty share awards for the 2010-13 cable royalty funds become final and all appeals are resolved.

B. Distribution Phase Controversies

In any Distribution Phase proceedings regarding the 2014-17 Cable Funds, MPAA will represent the MPAA-represented Program Suppliers exclusively. MPAA-represented Program Suppliers have claims to royalties awarded for movies, syndicated programming, and special programs, including non-team sports programming, as to the 2014-17 Cable Funds. To the extent a claimant not represented by MPAA makes a claim within the Program Suppliers category, a Distribution Phase controversy would exist against the MPAA-represented Program Suppliers. MPAA-represented Program Suppliers are aware of Distribution Phase controversies in what the Judges have historically referred to as the Program Suppliers category between the MPAA-represented Program Suppliers and those Program Suppliers represented by the National Association of Broadcasters ("NAB") as to the 2014-17 Cable Funds and Multigroup Claimants

(“MC”) as to the 2015-17 Cable Funds.² MPAA has not reached Distribution Phase settlements with either NAB or MC as to the 2014-17 Cable Funds, and it anticipates that a hearing may be necessary to resolve some or all of those controversies. If Distribution Phase hearings are held, MPAA intends to participate fully in those hearings. MPAA will represent the producers and/or distributors of syndicated series, including non-team sports, movies, and specials who have agreed to representation by MPAA. MPAA recommends that any Distribution Phase proceedings related to the 2014-17 Cable Funds be consolidated with or conducted concurrently with Distribution Phase proceedings related to the 2014-17 Satellite Funds.

Respectfully submitted,

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² Program Suppliers have been unable to locate a claim to the 2014 cable royalty fund filed by either MC, or its predecessor entity Independent Producers Group (“IPG”) in the records of the Copyright Royalty Board.